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PORNOGRAPHY AND PROSTITUTION

A brief prepared by the
Ontario Advisory Council on the Status of Women

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INTRODUCTION

Pornography and prostitution are two forms of discriminatory exploitation and violence against women and children that the Ontario Advisory Council on the Status of Women wants eradicated.

Pornography and prostitution are supported by a sexist culture and in turn are important contributors to the furthering of such a culture. Both are so interwoven in our society and so confused with notions of sexual freedom that the real threat to the lives, safety, freedom and dignity of women and children is hidden. In this paper, the Council has attempted to provide a clear picture of the true nature of these forms of abuse and to ask for more effective laws, law enforcement procedures and social reform policies to deal with them.

With reference to pornography, the Council is asking for a clearer and more effective definition and interpretation of obscenity in the Criminal Code, greater law enforcement efforts at all levels of government, and stricter and more uniform controls on the importation of pornographic materials.

With reference to prostitution, Council contends that the law and law enforcement efforts have to date focused on the prostitute. Prostitution is seen by society and the law as a crime perpetrated by women. In this brief, we argue that prostitution is a crime against women and adolescents and, in light of this, the sanctions should be against the customers, pimps, procurers and profiteers.

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PORNOGRAPHY

Definition

Pornography is unacceptable not because it portrays explicit sex but because it promotes hatred, violence, degradation and dehumanization. Pornography is sexist material that portrays women as a distinct sub-human species that does not feel pain or humiliation in the same way as men, and which desires violence and degradation for sexual pleasure. Pornography advocates, encourages and condones coercion, sexual violence and battering and portrays these activities as normal behaviour. As an expression of sexist ideology, pornography "promotes a climate in which acts of sexual hostility directed against women are not only tolerated but ideologically encouraged" (Brownmiller, 1975). Pornography also condones and normalizes abuse of children by portraying them as sex objects in publications such as Family Affairs that proselytize the positive aspects of incest.

Pornography represents a distortion of reality in several ways. Firstly, sexual sadism is presented as women's source of pleasure, implying that it is not affection, caring and mutual respect that women want but submission, humiliation, rape and torture. Women are also portrayed as agreeing to the abuse freely and having as much power as the perpetrator of the violence. Often, in spite of the beatings and rape, the women do not show the signs of violence on their bodies. There are no cuts, bruises or blood. Their pain is often covered by hiding their faces or binding their mouths to stifle screams (Barry, 1979). In addition, children are portrayed as being fully developed sexual beings that have the power to consent freely to sexual encounters with adults. Sometimes this message is given through actual use of children in sexual poses or scenes and sometimes by the use of adult women dressed as and playing the role of a child. Lastly, men's sexuality is distorted. Men's arousal is said to depend on women's pain and submission. Men are portrayed as having a need for power in sexual relations and as being incapable of engaging in mutualistic sexual encounters. Intimacy is to be feared and avoided by men because women are evil and any show of emotions makes one weak, vulnerable and feminine. All of these distortions are designed to alleviate any guilt or empathy for the victims. The user of pornography is given a licence to engage in any act desired without concern for consequences because these consequences are denied.

Pornography does not liberate us from repressive sexuality, but rather replaces one form of repression with another by presenting the concept that sex is dirty and women are evil and deserving of contempt. Brownmiller (1975) stated that pornography, much like rape, "is designed to dehumanize women, to reduce the female to an object of sexual access, not to free sensuality from moralistic or parental inhibitions". Pornography portrays women's bodies being "stripped, exposed and contorted for purposes of ridicule" and plays into a sense of power by portraying women as "anonymous, panting playthings, adult toys and dehumanized objects to be used, abused, broken and discarded. Pornography is the undiluted essence of anti-female propaganda".

Erotica - How it Differs from Pornography

Steinem (1980) defined erotica as a "mutually pleasurable sexual expression between people who have enough power to be there by positive choice. . .the word erotica is rooted in eros or passionate love and thus in the idea of free will and yearning for a particular person". According to Steinem, erotica is truly about sensuality and sexuality and often it gives a contagion of feeling or pleasure. Pornography is the opposite of erotica. It is not about mutual love nor is it about feeling or caring. Pornography is about power, domination, violence and sex-as-weapon. In pornography one has to identify with the conqueror or the victim, while in erotica there is no such requirement since both partners are equal. Pornography is "sex being used to reinforce some inequality, or to create one, or to tell us that pain and humiliation are really the same as pleasure." (Steinem, 1980).

Audre Lorde states in her book The Uses of the Erotic: The Erotic as Power, that the erotic involves all of life, all of a being. It is not genitalily focused. There is a richness of intimacy and connectedness. Erotica is personal. Pornography seeks out death and destruction while erotica focuses on life and the beauty and power in sensuality, sexuality and intimacy. The erotic embodies those "physical, emotional and psychic expressions of what is deepest, strongest and richest within each of us, being shared: the passions of love, in its deepest meanings". (Lorde, 1978)

At present little is available of the type of erotica described by Steinem and Lorde. There is a great deal of pornography that calls itself erotica. Often images or descriptions that lead to sexual arousal or stimulation are deemed erotic

because they have this effect. Whether or not material leads to arousal is not the issue. Pornographic images may lead to sexual excitement, and in fact, are often designed to do just that. It is the content of sexual material, not the effect, that determines whether it is pornographic or erotic.

The fact that material is artistic or well-written does not automatically make it erotic rather than pornographic. Artistic works, just as any other material, can portray sexual power and dominance and can promote violence and degradation. As Canadian artist Sasha McInnes Hayman (1984) stated, "time and again (in so-called erotic works, we see) the male confronting the female nude as an adversary whose independent existence as a physical or spiritual being must be assimilated to male needs, converted to abstractions, enfeebled or destroyed". In the words of Griffin (1978), "the denigration of women and our bodies pervades every expression of culture, no less in great art and literature than what is sold in pornography, and our outrage against pornography must reach for this clarity: that the very way patriarchy has of seeing us is a crime against our lives." Burstyn, as cited in McInnes Hayman, has challenged artists to create images that express truthful and empowering images of sexuality rather than continuing to create degrading images of women.

In conclusion, it is essential that writers, artists, film-makers, educators and researchers develop materials that clearly inform society about the differences between pornography and erotica. The exploration and production of positive alternate images to the ones presented in pornography should be encouraged.

The Effect of Pornography on Sexual Relations

Pornography does not provide education or liberation. Instead, it attempts to force women and men back into rigid and destructive role definitions. The image of sex given in pornography is one of an impersonal act, lacking in feeling, love, or romance and as something that is primarily established for male satisfaction. The male is depicted as being totally in control and as showing no sign of emotion or vulnerability. He is portrayed as incessantly desiring sex and is told that he should, in fact, be able to find willing partners easily. In addition, he must be able to have and maintain an erection throughout his marathon of sexual exploits. Pornography feeds the notion that sex is about performance and thus it fuels men's sense of pressure and fear as well as their alienation from and hatred towards women.

Women in pornography are described as beings that must be controlled and kept in their place. The message is that it is too dangerous to allow them to be equal partners or to get too close. Women are portrayed in pornography as "carnal, submissive, whore-victims and ruined virgins" (Ratterman, 1982) who do whatever is demanded of them and who often beg to be slaves. Whatever their age, they are totally accessible to men. All of their sexual behaviour is geared toward providing for and pleasing men. Pornography distorts women's sexuality. It also provides an excuse for men to avoid relating to women as people. One does not have to relate to an object, or worry about an object's pleasure or even its consent.

Women are harmed by the pervasive images of pornography. They are also terrorized by the message that male violence and power is so prevalent and menacing. Pornography alienates women and men. In no way does it foster healthy sexual or human relations any more than other forms of hate literature would foster healthy relations between races or religions.

Research on the Harmful Effects of Pornography

According to Eysenck (1978), one of the best known and most respected of psychologists, aggressive pornography demonstrates a clear case of "incitement to maltreat women, to do violence to them, to downgrade them, to regard them as mere sex objects and elevate male machismo to a superior position in the scale of values". Such incitements, he concluded, should be proscribed.

All of the research and theory involved in behaviouristic psychology points to the conclusion that aggressive pornography has all of the elements - modelling of violent behaviour, desensitization to violence and establishment of a connection between sex and violence - to lead to a very powerful effect on consumers. Those that attempt to refute the notion that pornography has a negative effect often turn to the catharsis hypothesis. In essence, this hypothesis suggests that pornography offers a safety valve for society because it allows men to deal with natural pent-up aggression by means of harmless fantasy. As McCormack (1978) states, the assumption of those using the catharsis hypothesis is that men have a different sexual nature than women, that for them sex and aggression are instinctively connected and that men have more difficulty than women in controlling sexual and aggressive drives. By allowing individuals to deal with such instincts in fantasy,

society is supposedly protected from actual enactment of anti-social behaviour. In essence, then, pornography is supposed to serve a necessary and useful function.

The catharsis hypothesis makes very little logical sense and has not received empirical support. Research does support the behavioural model; it unequivocally shows that portrayals of violence contributes to subsequent anti-social attitudes and behaviour in viewers. According to Scott (1984), no serious research scientist today questions whether the portrayal of violence contributes to anti-social behaviour but rather asks how much anti-social behaviour and under what circumstances. When the violence is connected with sex, the research evidence is similar. There is evidence that male subjects may be even more violent after exposure to sexual violence than after exposure to non-sexual violence (Donnerstein, 1980 as cited in Scott, 1984).

Anecdotal and Correlational Evidence

There is evidence connecting pornography to actual crimes committed in North America.

- In May, 1981, 16-year-old Darlene Prioriello of Mississauga was raped and brutally murdered. David Dobson, 18, was convicted of the murder. After raping her, he hit her on the head with a brick, choked her with a plank, pounded her head with a 70 pound concrete block and jabbed a long nail into her chest and side several times. Later when asked why he'd committed all of these violent atrocities, he said "I saw it in a magazine once". (Toronto Star, February 26, 1984)
- The slain body of Toronto lawyer Barbara Schlifer was found covered with pornographic materials.
- In Cornerbrook, Newfoundland, several high school boys tortured, raped and murdered a high school girl that one of the boys was dating. The boys tortured the girl using the same techniques as those depicted in pornography owned by one of the boys. The boys had a list of girls that were to be their next victims.
- A grade five Toronto student for a class essay wrote a graphic three-page description of the gang rape and mutilation he had seen in a video that his parents had rented. One month later, the boy was caught grinding a lit cigarette into a kindergarten pupil's neck. (Toronto Star, February 26, 1984)
- A 14-year-old London area boy raped a seven year old girl after looking at a Hustler magazine that he found in the house where he was babysitting. He showed her one of the pictures and forced her to do what was portrayed.

- Most police officers agree that pornography leads to crimes of violence and report that rapists and murderers of women and children often possess pornographic material. Clifford Olsen, the Vancouver child mass murderer, was found to have a large collection of child pornography. Pornographic pictures papered the walls of the shack where Melvin Rees tortured Mildred Jackson and her 5-year-old daughter. David "Son of Sam" Berkowitz was found to have a large collection of pornographic magazines by his bedside.
- Theodore Bundy, the suspected murderer of more than 20 women across the United States, stated that his ever-increasing appetite for pornography led him to act out his violent fantasies in real life. The major thrill in reading the pornography was imagining inflicting pain and humiliation on women while possessing them as objects. (Toronto Star, March 5, 1983)
- In London, Ontario, 31-year-old John Bray consumed alcohol and LSD and watched pornographic movies before killing his 54-year-old neighbour in what the court called a sexually-motivated slaying. About 40 books of 'varying degrees' of pornography were found in Bray's apartment, including some on the topics of bondage and incest. (London Free Press)
- In a study done at the University of California, it was found that 87 percent of molesters of female children and 77 percent of molesters of male children admitted modelling their activities on pornography they had seen. In one case involving incest, the perpetrator was found to have a whole series of photographs which showed his daughter bound and hanging from a hook - all poses that he had duplicated from pictures in bondage magazines.
- Davis and Braucht (1973), in a study of 365 subjects, showed a relationship between sexual deviance and exposure to pornography, especially at an early age.
- Research on sex offenders in prisons by Shultz (cited in Jones, 1980), indicated that according to half of the men she interviewed, pornography played a definite part in their crimes either by arousing them or by teaching them what to do or both. Many men told her they would not have committed their crimes had they had any other source of information about sex besides pornography.
- Dr. William Marshall from Queen's University stated that pornography, both hard- and soft-core, contributes directly to sex offences. Dr. Marshall has been treating sex offenders for 13 years. He stated that pornography always depicts women in a degrading role. It makes it acceptable to harm women, and sets the stage for rape to occur. Both adult and child pornography maintains and keeps deviant behaviour going. (Kingston This Week, March 16, 1983)
- Dr. Gene Abel, director of the Sexual Behaviour Clinic at the New York Psychiatric Institute, stated that until society eliminates sexism and pornography there will always be rapists and child molesters. Crime and arousal begins at an early age, in some cases as young as 10. (Toronto Sun, April 29, 1983)

Experimental Evidence - Pornography, Sex-Role Stereotypes and Rape

Check and Malamuth (in press) showed that subjects low on sex-role stereotyping were more sexually aroused by consenting sex than by rape depictions while subjects high on sex-role stereotyping showed equal levels of arousal to both consenting sex and rape depictions. In addition, high sex-role stereotyped individuals perceived rape victims as reacting more favourably to rape and they reported a greater likelihood of committing rape if assured no one would know. These findings suggest that influences contributing to the development of sex-role stereotypes also lead to the development of rape-supportive culture. One could assume this would be particularly true of pornographic materials since they not only contribute to the furtherance of stereotypes but also postulate those stereotypes most dangerous to women, namely, that a woman's resistance to sexual advances is not to be taken literally but is part of the game, and that women not only enjoy but need coercive sex, rape and violence for their sexual pleasure.

Rape is not, as many would have us believe, committed by a few deviant or mentally ill individuals. It is committed by the so-called normal man who happens to become sexually aroused to rape depictions (Abel et al., 1977; Hinton et al., 1980; Quinsey et al., 1981); believes in rape myths or prejudicial stereotyped or false beliefs about rape, rape victims and rapists (Burt, 1980; Malamuth, 1981); and has calloused perceptions of the victim's reactions to being raped (Check and Malamuth, in press). Rapists many times appear to believe that their actions did not constitute rape. As reported in Check and Malamuth, the most common statement of rapists to victims is "you know you want it. You all want it", and afterward, "there now, you really enjoyed it, didn't you?" Pornography contributes to all of these factors. It attempts to cause sexual arousal to depictions of rape and violence towards women. It postulates rape myths and calloused attitudes towards women. In addition, the cry of rapists that women want to be raped is standard fare in pornographic materials.

Evidence that pornography leads to arousal to rape depictions, as well as affecting perceptions of rape and rape victims, was shown in a study by Malamuth et al. (1980). Subjects were first exposed to either a sadomasochistic or nonviolent version of the same sexual passage from Penthouse and then to a description of a violent rape in which no sexual excitement was expressed by the victim. In the sadomasochistic version of the story, the violence was described as stimulating

intense sexual arousal in the victims. The males who were first exposed to the sadomasochistic story identified with the rapist and saw rape as conceivably within their own range of behaviour. In addition, they were subsequently more sexually aroused by the rape depiction; the greater their perception of the victim's pain, the more excited they became. On the other hand, males exposed to the nonviolent description prior to the rape story showed less excitement the greater the perception of the victim's pain. It is interesting to note that current treatment of sex offenders such as rapists and child molesters (Abel et al., 1979; Quinsey et al., 1980, 1981) involves conditioning them to respond to appropriate sexual stimuli. This conditioning process is established by associating sexual fantasies or depictions with sexual arousal. It is therefore possible that conditioning of fantasies and behaviour could occur when observers are presented with images connecting violence against women with sexual arousal. In fact, there is data to suggest that exposure to aggressive pornography can lead to self-generated rape fantasies (Malamuth, 1981).

The Portrayal of the Willing Victim

The typical scenario in pornography shows the victim enjoying rape and battering. An extensive content analysis of pornography showed that about one-third of episodes showed force being used, one-fifth of the sex acts was explicitly a rape and one-fifth of the rapes involved a virgin. Initially, the woman's resistance is described graphically and yet before the episode is completed she has become sexually aroused and physically co-operative and begs for more. Ninety seven percent of the rapes depicted resulted in orgasm for the victim. The victim's shame at her gratification leads her not to report the act to anyone and therefore less than three percent of the rapists depicted encounter any negative consequences (Smith, 1976).

This image of a woman enjoying her victimization is particularly dangerous. Typically, only rapists show sexual arousal to scenes of rape (Heim, Malamuth, Feshbach, 1977; Abel et al., 1977). As for normal subjects, hostile aggressive content was thought to inhibit arousal. However, Abel et al. (1977) found that when one sentence in a 300-word rape story was altered to indicate that the victim became aroused by the rape, normal subjects became aroused sexually. Malamuth and Check (in press) compared responses of subjects who professed a low likelihood to rape if assured of not being caught with responses of individuals indicating a

high likelihood to rape. It was found that both low and high likelihood to rape subjects were less aroused sexually by non-consensual as compared to consensual sexual acts. On the other hand, when the victim in the rape scene was portrayed as becoming sexually aroused, the subjects who reported that their likelihood to rape was low became equally aroused to consensual and non-consensual depictions. Subjects with a high likelihood to rape showed greater arousal to the non-consensual scenes. Since arousal to rape scenes is one of the predictions used in assessment of rapists, such a finding has important implications.

Another study by Malamuth and Check (1981) exposed college students to the films "Swept Away" and "Getaway". Both of these films involve sexual violence where the woman is depicted as enjoying the violence. Such exposure was found to increase male subjects' acceptance of interpersonal violence against women and acceptance of rape myths. Females exposed to the films showed nonsignificant trends in the direction of less acceptance of interpersonal violence or rape myths. These measures were taken several days after having viewed the movies and subjects were not aware that there was a relationship between the survey and the viewing of the movies.

Pornography and Desensitization to Violence

Donnerstein and Linz (1984) are investigating how massive exposure to commercially released, sexually violent films influences viewer perceptions of violence, judgements about rape and rape victims, and general physiological desensitization to violence and aggressive behaviour. In one of their studies, male subjects watched nearly 10 hours (one feature-length film per day for 5 days) of R-rated or X-rated movies. The R-rated movies were sexually violent films such as "I Spit on your Grave" and "Texas Chainsaw Massacre" (both available in Canada; "I Spit on your Grave" was recently found to be obscene in a Toronto-based trial) or X-rated movies showing only consenting sex. The R-rated films were more explicit with regard to violence than with regard to sex. After the week of viewing, subjects were exposed to a re-enactment of an actual rape trial and then asked to indicate the level of responsibility the victim had for her rape and the injury she suffered. The findings showed that the men watching the R-rated films became desensitized. Over the course of five days, they moved from depression, anxiety and annoyance as responses to a point where by the last day, the men were rating the material as significantly less debasing and degrading to women, more humorous

and enjoyable and they were indicating a greater willingness to see more of this type of film. In addition, the victim in a simulated rape trial was rated as more worthless and her injury as significantly less severe by men exposed to the filmed violence. These investigators are also looking into the effects of films such as "Porky's" and "My Tutor" that do not explicitly portray violence against women but that describe women as sex objects.

Aggressive Pornography and Aggression Against Women

A random sample of more than 900 women in San Francisco found that 10 percent had been approached or abused by men who explicitly referred to pornography to explain or legitimate what they wanted. The behaviour that the men attempted to force on the women included urination, punching or slapping, and forced vaginal or anal intercourse (Russell, 1983).

It has been found that exposure of male subjects to aggressive pornography increases aggressive behaviour against female but not male subjects in comparison to neutral scenes or aggressive, non-pornographic scenes and mutually consenting sex scenes. The aggressive scenes alone also increased aggression against females (Donnerstein, 1980, 1983; Donnerstein and Berkowitz, 1981; Malamuth, 1982).

Donnerstein (1983) found even when sexual assaults are eliminated and the victim is portrayed as being exposed to brutality alone, the male subjects rate what they have seen as sexual. Donnerstein stated that many males have an internal scenario of sexual violence that is crystallized or legitimized by violent pornography and can even be imposed upon violent material that does not quite fit.

Donnerstein (1980) examined responses of male subjects to film clips in which women are depicted as victims of sexual violence. Those subjects who were mildly angered by a male or female experimenter before seeing the film clips showed increased aggression afterwards to both the male and female experimenter - but especially against the woman. Those who were not angered prior to the films showed no aggression against the male, only toward the female.

Donnerstein and Berkowitz (1981) found that male subjects who were angered were more aggressive in a laboratory setting toward the female experimenter after viewing either an aggressive pornography film where the victim is shown to suffer

or where the victim is portrayed as enjoying the violence. When the subjects were not angered prior to viewing the films, aggression was increased toward the female experimenter only after viewing the film where the victim enjoyed her violence. It is interesting to note that factors that identify rapists - sexual arousal to rape depictions, acceptance of rape myths and acceptance of interpersonal violence against women - have been shown to be predictors of aggression against women in these laboratory experiments (Malamuth, in press). Such a finding, as Scott (1984) points out, helps to bridge the gap between laboratory and real life behaviour and makes it somewhat more feasible to draw implications from these studies to behaviour outside the experimental situation.

The detrimental effects of pornography have so far been demonstrated with blatantly coercive materials. The effects of materials that portray coercion more subtly have not been adequately researched as yet. Zillman and Bryant (in press) suggest that massive exposure to pornography that is not blatantly aggressive may have similar effects as those documented with clearly aggressive depictions.

Harm to Participants in the Pornography Industry

Women involved in the pornography industry are in much the same situation as are prostitutes, since that they are in the business of performing sexual acts for money.

There is little research into the lives of women in the pornography trade and it is vital that we begin to gather accurate information in this area. What little information we have suggests that women initially get into pornography because of financial need. They are often from disadvantaged groups in society and are also particularly vulnerable, as is the case of young runaways. In addition, many become involved during a time of extreme stress in their lives. Often women answer ads offering jobs in modelling and they may begin by doing semi-nude modelling. However, after they have been in the trade for a while, their value decreases and they may end up having to take work in hard-core pornography. As with prostitutes, those in hard-core pornography become incorporated into a stigmatized sub-culture from which escape is difficult (Lederer, 1980).

Working conditions in pornography include dangerous stunts and exposure to violence, rape and sexual harassment. The women are also exposed to emotional

abuse because they are often treated as objects of scorn and contempt. They are much more open to a series of vaginal and bladder infections and venereal disease (Lederer, 1980). The autobiography, Ordeal, by Linda Lovelace (1980) shows the incredible violence and enslavement that can be involved in forcing women into pornography and in keeping them there. Lovelace was coerced into the business by a male who supposedly befriended her. When she refused his request he humiliated, terrorized, beat her and forced her at gunpoint to earn money for him through pornography and prostitution. She was forced into every conceivable atrocity, including gang rape and bestiality. Every beating, rape and degradation she suffered made her a weaker and more docile victim. "Deep Throat," a film made for sexual titillation, made millions of dollars from the enslavement and violence perpetrated on this woman.

Child pornography is big business. It is also one of the largest procurers for child prostitution. Getting recruits does not seem difficult. Many magazine and film publishers use their own children; others advertise (Rush, 1980). In addition, there is a steady supply of runaway adolescents who turn to pornography for survival. The emphasis in child pornography is on the "innocence of children and lechery of adults. The models are boys from six to thirteen and girls from six to fifteen. The emphasis is on hairlessness, tiny genitalia and lack of breasts" (Rush, 1980).

The child pornography market is extremely clandestine and according to Rush (1980) the numbers that we have are only the tip of the iceberg. Rush estimated that in the United States, between one-quarter and one-half of the pornographic industry is involved in child pornography. In addition, 1.5 million children under 16 are used annually in commercial sex. In 1975, Houston police uncovered a warehouse filled with child pornography. Among the collection were 15,000 colour slides of children, 1,000 magazines and thousands of reels of films. One United States writer was able to collect 264 different child-porn magazines and found a sex guide for pedophiliacs containing a list of 378 places where young children could be found. This guide had sold more than 70,000 copies. Much-needed research on child pornography in Canada is now being conducted by the Badgely Commission. There is presently enough knowledge from police departments across Canada to show that child pornography is a very real and growing problem. Law enforcement efforts must be increased to deal with this horrible form of enslavement and abuse of children.

Freedom of Speech

In this brief, we are asking for stricter obscenity laws and better enforcement procedures in order to put stronger limits on pornographic materials. This approach has been criticized on the grounds that such measures constitute censorship and interferes with fundamental rights and freedoms such as personal liberty and freedom of expression. In response to this concern, it should be noted that in a democratic society, individual freedoms have always been restricted when they jeopardize the freedom or safety of others. Longino (1980) rejected the argument that places pornography under the umbrella of freedom of speech. The defence used by pornographers is that while pornography may be tasteless and vulgar, it is basically an entertainment that harms no one but its consumers. Any control over pornography is therefore an unjustifiable infringement on the freedom of speech of publishers and sellers of pornography and on the consumer right to privacy. Longino counters that the right to privacy argument is misplaced because the harm that results from pornography is in the public sphere. In addition, she argues that freedom of speech never has been absolute or unqualified. Freedom of speech is "a derivative right; it is subordinate to the right to independence; it is a means to freedom. Pornography interferes with women's right to independence and it violates women's freedom of expression" (Longino, 1980 as cited in Jarvis, 1982).

Clark (1978) stated that the liberal principle behind the opposition to censorship is based on the need to allow free expression of ideas that challenge the status quo in order to facilitate real social change. Pornography does not challenge the status quo. It promotes the idea that women are inferior, are second class citizens. The threat of violence in pornography can be seen as a means of social control of women. As Brownmiller (1975) states, "these images have nothing to do with the hallowed right of freedom of dissent".

We have laws against hate literature, slander and libel. Pornography violates all of these laws. It promotes hatred toward more than half of the human race and advocates behaviour that would be illegal if committed in reality. By condoning rape, battering and child molestation, pornography affects the physical safety of women and children. It causes women to feel terror and vulnerability at the knowledge that men get sexual pleasure out of such images. Pornography interferes with women's dignity and political equality. The business of pornography is designed to keep women in their place. As Longino (1980) states:

"Each work of pornography on its own is libelous and defamatory, yet gains power through being reinforced by every other pornographic work. The sheer number of pornographic productions expands the moral issue to include not only assessing the morality or immorality of individual works but also the meaning and force of the mass production of pornography".

An analogy of racism is useful in that it is clear that "against no other group in society could handbooks or blueprints for sadistic violence, mutilation and even homicide abound with such safety, support and impunity" (Barry, 1975). If we were dealing with magazines and videotapes that condoned blacks or Jews being lynched, bound, or castrated, it is doubtful that anyone would refer to freedom of speech to protect such materials. (Emphasis ours)

The greatest difficulty in opposing pornography is that such a stance is aligned with prudery, while support for pornography is aligned with liberalism. For many people, the real issues of sexism and misogyny are hidden under the guise that pornography deals only with sex. Such a response indicates how ingrained sexism is in our culture when such blatant materials escape detection. The acceptance of pornography in our culture is the clearest statement about acceptability of women-hating and women's diminished status in society.

Clark (1978) stated that we are justified in prohibiting action and materials that cause harm either through direct infliction or threat or by violation of rights. It is irrelevant whether or not such materials bring sexual pleasure to observers or users. We are not infringing on the legitimate rights of others by denying access to material that uses violence against women and the use of children for purposes of sexual entertainment and excitement.

Conclusion

The Ontario Status of Women Council proposes that stronger laws and stricter enforcement procedures be imposed to help eliminate pornography from our society. Obviously, changes in the law cannot deal with all of the problem and therefore it is not the only change proposed. In order to mitigate some of the harm of pornographic images, the public must be fully informed as to the true nature and deleterious effects of pornography. Additional funds must be channeled in this direction as well as into the development of good sex education materials and into the training of competent personnel to use these materials in the schools.

With respect to changes in the law and its enforcement, it is necessary to have all levels of government involved. Changes to the Criminal Code and the Customs Tariff Act are needed. A stronger push for uniform enforcement of these laws is needed. In order to accomplish this, there needs to be increased communication between the federal government and the provinces. The Council particularly wishes the Ontario Attorney General and Solicitor General to establish clear guidelines for enforcement in this province. In addition, the curtailment of pornography must be seen as an important problem that warrants additional funds and trained personnel. It is hoped that we can also urge the other provinces to tighten enforcement proceedings, for if pornography is allowed to flourish in any part of the country it will be easily transported to every other province. Training programs are necessary for police officers, crown attorneys and judges in order to deal more effectively with the obscenity provisions in the Criminal Code. At the municipal level, local police forces must be encouraged to develop a comprehensive plan for dealing with pornography. In addition, municipalities should exercise their regulatory powers to control the display of pornographic materials that cannot be captured under the Criminal Code.

The Criminal Code

A) Obscenity

Under its authority on matters of criminal law, the federal government has addressed the aspect of obscene pictorial material, among other things, in Section 159 of the Criminal Code. Obscenity is defined in the Code as:

any publication the dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene. (S.159.8)

Problems with the Wording and Interpretation of the Obscenity Legislation

- 1) Section 159 of the Criminal Code has been interpreted in such a manner as to focus primarily on explicit depictions of sex or genitalia and not on depictions of sexual violence. The courts have found the following to be obscene:
 - i) child pornography;
 - ii) bestiality (sexual intercourse between a person and an animal);
 - iii) necrophilia (sexual intercourse with a human corpse);

- iv) simulated sex accompanied by hard core dialogue and depictions of anything being inserted into the vagina or anal canal;
- v) explicit depiction of masturbation, ejaculation, cunnilingus (mouth to female genitalia contact), fellatio (mouth to male genitalia contact), analingus (mouth to anus contact), buggery (penetration of anus by a penis), or intercourse (penetration).

The reference in Section 159(8) to sex in combination with violence, crime, horror or cruelty has rarely been used in obscenity cases. It should be noted that whether the material is harmful is irrelevant to the issue of whether it is obscene for the purposes of the Criminal Code.

- 2) Even though obscenity legislation is federal, it is not interpreted or enforced uniformly across Canada. The Attorneys General in the provinces set their own guidelines and standards concerning interpretation and enforcement of the obscenity legislation. In British Columbia and Quebec, the guidelines established are more lenient than in other provinces.
- 3) The test of undue exploitation of sex is determined in part by reference to contemporary community standards of tolerance. This test, according to the Standing Committee on Justice and Legal Affairs (1978) has led to "a great deal of controversy and inconsistency in obscenity case law".

In virtually every case, the defence calls expert witnesses to give testimony as to what the average Canadian would tolerate. Usually these experts are artists, art critics or university professors and almost always they are male (Jarvis, 1982). Since survey evidence of standards of tolerance is virtually inadmissible in the courts, these experts rely on their hunches, impressions and subjective judgements (Standing Committee on Justice and Legal Affairs, 1978).

Additionally, Barlow (1983) found that these assessors of community standards are generally individuals who use and accept pornography. The opinions of people who do not watch pornography, and are therefore unaware of the depravity of its content, are not brought to bear in these decisions. And since juries are rarely used in obscenity trials, another opportunity for public opinion to be expressed is denied. (The accused usually request trial by judge.)

There is circularity in the community standards test. Tolerance of material has often been assumed by the courts based on the fact that the material in question was found to be available on newsstands or because similar films or materials were being shown in other parts of the country. In essence, the system says one cannot remove material from public view until it is deemed obscene and yet its very presence may be used to indicate the material is tolerated by the community and therefore not obscene (Jarvis, 1982). Lastly, there appears to be no opportunity for community standards to move in the direction of less tolerance for pornographic materials. Whenever a decision is made that a particular material is not obscene, a new standard of tolerance is set. Even if there are complaints by citizens, the police or Crown Attorney will almost never bring to court material that appears less explicit or obscene than the standards previously set.

Jarvis (1982) quoted the trial judge in the "Last Tango in Paris" trial as saying:

"A perusal of the now familiar leading decisions on the matter in no way supports such a narrow and extreme meaning for obscenity (as the basest hard-core pornography), and yet, step by step, decision by decision, it seems apparent that that in fact is very much the direction towards which Courts are heading in their pronouncements.

What must surely be the concern of the judiciary is that wittingly or not, by being the final arbiter in the assessing of prevailing community standards of acceptance, with each decision, in a sense, a new level of acceptance is, so to speak, officially sanctioned; which then in turn encourages even further degrees of permissiveness to evolve. While the law simply demands that Courts mirror the prevailing community standards, by this argument they indeed become allies to the cause of increasing and legal exploitation of sex".

According to Jarvis, a better question is: ought the community to be tolerant of particular types of material?

- 4) The use of the word dominant in the present definition of obscenity is problematic. At present, in order to determine whether undue exploitation is a dominant characteristic, the police must prepare a detailed grid, breaking down the composition of an allegedly obscene magazine or movie. For example, a magazine must be read in its entirety and analyzed specifically for story content, pictorial content, literary and artistic merit, ads, and the extent to which it is newsworthy. The process is extremely time consuming

and considerably limits the number of charges police are able to lay. More importantly, it means that material which has horrible scenes of violence is beyond the reach of the law if the scenes are a less dominant characteristic of the work.

- 5) Under the present wording of the legislation, where obscenity is defined as the undue exploitation of sex combined with any one or more of crime, horror, cruelty or violence, sex has typically been interpreted to mean explicit sex. This means that if the image is of a woman being beaten by a man but the man's penis is not exposed, the material would probably not be deemed obscene. This would be true even if the text accompanying the picture explicitly described the woman as achieving sexual pleasure and orgasm from her beating.
- 6) There is no provision under the Code for finding material obscene when it is an undue exploitation of any one or more of violence, crime, horror, cruelty or degradation.
- 7) Police and customs officials interpret case law such that pornographic scenes that have apparently been 'posed' or 'simulated' are not considered prosecutable. The exceptions are: three or more people engaged in simulated sex; children engaged in simulated sex; simulated bestiality or simulated adult-child sex. When violence in a sexual connotation appears simulated it is often not prosecutable. Thus, magazines showing bondage or spanking are not obscene if the victim appears posed or artificial. In addition, if the victim appears to be enjoying the violence then the scene is also considered simulated and therefore not obscene. These are particularly distressing interpretations of current provisions.
- 8) The Code does not address the issue of use of children in sexual poses or scenes. It has been stated by police officials that children in Playboy-type poses would not necessarily be considered obscene. Indeed, in a recent court decision concerning pictures of a 14-year-old girl posing nude with her legs spread 7 to 12 inches apart, the judge stated that "there was no evidence to suggest the poses exploited one part of her body over another" and that he had "grave doubts that in 1983 a picture or pictures and poses as described by the complainant would be considered obscene". He went on to state that he

did not believe that just because she was a juvenile such pictures should be considered obscene when they would not be so considered were she a woman of 18 or 20 (London Free Press, June 23, 1983).

- 9) The penalties set out under Section 165 of the Criminal Code for obscenity offences are much too low. Anyone convicted under these sections of the Code is guilty of an indictable offence and subject to imprisonment for two years or of a summary conviction offence, which carries a maximum fine of \$500 and/or a maximum prison term of six months. (Standing Committee on Justice and Legal Affairs, 1978).

Issues to be Considered in Interpretation of Obscenity

The Fraser Committee Issues paper asked whether the same behaviour could be considered pornographic when presented in the form of a live show and yet not be pornographic when portrayed in pictures, films or video cassettes. The Council wishes to emphasize that the major issues in deeming something pornographic are whether or not the material or presentation is sexist or degrades or humiliates one of the participants or represents power imbalances or violence. If the context of the show or material presented involves any of these factors, then it is pornographic. The Council considers strip shows to be inherently degrading and therefore pornographic. Both written and visual materials can be pornographic and both can produce harmful effects (Malamuth, 1980). Law enforcement officers and Crown attorneys are reluctant to lay charges and prosecute in the case of written material and Council would like this situation remedied. Often other forms of hate literature are presented in written form and some of the worst pornography is also presented in this form.

At present, the artistic or literary merit of a work is considered in determinations of obscenity. The Council wishes to state emphatically that if a work is artistic or literary it should not automatically be exempt from being found pornographic or obscene.

Whether the behaviour of violence or degradation is condemned or condoned should be considered in determinations of obscenity. If the behaviour is condemned, it does not automatically mean the material is not to be found obscene. That would be one of many factors to be considered. An abuse of this

type of defence was found in the arguments to have the violently pornographic videotape "I Spit on your Grave" not deemed obscene because the victim in the film brutally killed and mutilated her assailants.

The type of behaviour to which the parties consent is important. If sexual material portrays affection between consenting adults and neither party is represented in a demeaning or degrading manner, then the material should be considered erotic. If one of the persons is involved in violence or domination, even if it appears to be with the victim's consent, then the material should be considered pornographic.

Pornographic material is always objectionable. It may, however, be used to educate the public about the effects of pornography, to conduct scientific study into the harm caused by pornography and to achieve therapeutic results, especially in work with sex offenders.

It is possible that sexual material that is thought to be harmless to adults is nevertheless harmful to children. More research is needed in this area. The Council fully supports the development of good sex education materials to be used for school age children. The type of material to be used and the appropriateness for various age groups deserves further study. Lastly, pictures of nude children in suggestive poses are definitely harmful if the purpose is to exploit, objectify, or elicit sexual responses.

Recommended Changes to the Obscenity Legislation

- 1) The word "publication" in Section 159(8) should be changed to "any matter or thing".
- 2) The guidelines and standards for interpretation of the obscenity legislation should be uniform across Canada.
- 3) Either the current use of the concept of community standards of tolerance ought to be abandoned or a representative survey of Canadian views ought to be conducted and made available to the judiciary. Use of such survey results in court decisions would require a change in law that would clearly state such evidence is admissible.

In addition, for cases where the prosecution is taken under Section 159, the Criminal Code should be amended to permit the Attorney General to override an accused's option for mode of trial and request a trial by jury. (Standing Committee on Justice and Legal Affairs, 1978)

- 4) *The word "dominant" should be eliminated from Section 159(8).*
- 5) *Section 159(8) should be changed to allow for the undue exploitation of any one or more of crime, horror, cruelty, violence or sex or the undue degradation of one or more persons to be considered obscene.*
- 6) *When sex and any one or more of violence, horror, cruelty or violence are shown in combination in any matter or thing, there should be less stringent criteria used in order to establish undue exploitation. In addition, written or pictorial content that represents a victim as enjoying or desiring pain for sexual pleasure ought to indicate undue exploitation. Research clearly shows that the combination of sex with any of the above subjects and the indication of enjoyment of abuse by victim have the worst effects in terms of promoting violence against women.*
- 7) *For the purposes of subsection (8), any matter or thing that is otherwise obscene should be deemed to be obscene whether or not any acts or circumstances which are depicted or described in the matter or thing have been simulated.*
- 8) *Section 159(8) should be amended to include sexually explicit material involving children within the definition of obscenity. Where one or more persons depicted in sexual poses or scenes is a child (under 18 years of age) or is an adult portraying a child, it should be deemed obscene.*
- 9) *The sale or provision of obscene matter to children (persons under the age of 18) should be a separate charge under the Criminal Code and be subject to stiffer penalties.*
- 10) *As was similarly stated in the Standing Committee on Justice and Legal Affairs (1978), provincial, regional, municipal and local authorities should adopt the necessary zoning and child protection legislation, regulations and*

by-laws to ensure that pornography is advertised, displayed and sold discreetly to adults and under no circumstances to children or young people (under the age of 18).

- 11) *Section 165 of the Criminal Code should be amended so that stiffer penalties could be imposed on individuals convicted under Section 159.*

Prior Screening for Pornographic Material

Council believes that films and videotapes should be subject to prior screening by the provincial censor board. The censor boards should develop clear and explicit guidelines as to the type of material that is unacceptable. These guidelines should be based on a revised definition of obscenity in the Criminal Code. The issue of prior screening of pornographic magazines was discussed by the Council at great length. This procedure would have allowed magazines to be assessed for obscenity prior to distribution to sales outlets. It was decided that in spite of this advantage, the best way of dealing with this type of pornography at present is to greatly increase enforcement efforts at all levels of government.

Currently, law enforcement officials tend to deal with pornographic material on a public-complaint basis. This practice is unacceptable because individuals that use pornography are not likely to complain that the material is obscene. Local, provincial and federal authorities must increase their efforts to actively search out material that violates the obscenity legislation and to apprehend and prosecute those involved in the production, manufacture and distribution of obscene material.

Possession and Purchase

The issue of whether purchase and/or possession of material that contravenes the obscenity legislation should be subject to criminal charges needs further examination in order to clearly establish all of the implications of such a course of action.

B) Hate Literature

A convincing argument for viewing pornography as a form of hate propaganda is made by La Belle in her article, "The Propaganda of Misogyny". La Belle lists

eight techniques universally employed in propaganda campaigns and shows how pornography makes extensive use of all of them:

- 1) use of stereotypes
- 2) name substitution
- 3) selection
- 4) lying
- 5) repetition
- 6) assertion
- 7) pinpointing the enemy
- 8) appeal to authority.

Hate propaganda against identifiable groups on the basis of race, religion, or creed is proscribed in the Criminal Code. It is suggested that the Criminal Code be amended to allow "identifiable group" to include gender. In order to strengthen the legislation, it is suggested that the word "willfully" be removed. In addition, use of this legislation requires approval of the provincial Attorney General. This provision should be removed. These three changes to the Criminal Code would then provide another avenue of complaint against pornographic materials.

Recommended Changes to the Hate Propaganda Legislation

- 1) *The Criminal Code should be amended to include gender as an "identifiable group" in Section 281.1(4).*
- 2) *The word "willfully" should be removed from Section 281.2(2).*
- 3) *The approval of the Attorney General of the province should not be required to prosecute under Sections 281.1 and 281.2.*

Customs Tariff Act and Procedures

According to the 1978 report by the Standing Committee on Justice and Legal Affairs 80 to 85 per cent of pornography found in Canada is imported from the United States. Most of the rest comes from Europe - very little is Canadian-made.

Under the Customs Tariff Act, "books, printed paper, drawings, paintings, prints, photographs or representations of any kind . . . of an immoral or indecent character" are prohibited entry into Canada. Policy guidelines issued by the Customs Department indicate that in determining what is "immoral, or indecent", Customs is guided by the Criminal Code definition of obscenity and Canadian court decisions as to what is obscene.

According to Section 9(2) of the Customs guidelines, field officers are instructed to prohibit:

Section 9(2) (i) illustrated material containing hard-core pornographic pictures which lewdly and explicitly display the male and female sexual organs, sexual intercourse, sexual perversions and such acts, including bestiality.

(ii) reading material containing hard-core fictional text dedicated entirely to sexual exploitation and containing no redeeming features. The primary source of material of this character is the paperback, or so called "pocket" publications.

Field officers are to refer the following types of material to headquarters for classification:

(iii) that type of material, the so-called "grey area", with illustrations depicting similar subjects to those described in Section 9(2)(i) but in a less explicit fashion with emphasis, however, mainly on sexual activities and apparently designed to appeal in the same way as hard-core type pornography. In this category are pseudo or so-called "Nudist" and "Film" magazines which make pretensions to being bona fide but which include lewd or other pornographic displays.

(iv) any publication which despite its format or alleged scientific, medical or artistic purpose appears to be in essence an indecent or immoral publication in disguise.

....

(vii) any publication which appears to advocate, promote or incite hatred against any identifiable group, that is, by colour, race, religion, or ethnic origin.

(viii) any publication concerned with violence which counsels, appears to incite, advises, recommends or persuades persons to commit acts of violence which are prohibited by the Criminal Code.

Generally, the guidelines indicate Customs will allow the importation of magazines where the models are partially clad so that the genitals are not exposed and perversions are not depicted. Cultural and educational publications and bona fide nudist magazines, although illustrated with nude males or females but not including indecent poses or over-emphasis of the sexual organs, are also considered admissible. Non-illustrated fictional reading material, or fictional reading material with inoffensive illustrations, which does not fall in the category of hardcore pornography described in Section 9(2)(ii) is allowed to be imported.

The importer may appeal the decision of a Customs field officer to prohibit entry of material she or he deems to be immoral or indecent by making a written request within 90 days to a Dominion Customs appraiser for a re-determination of the status of her or his goods. If the importer is unhappy with the decision of the Dominion Customs appraiser, she or he has 90 days from the date of the appraiser's decision to make a written request to the Deputy Minister for re-determination. Decisions of the Deputy Minister may be appealed within 60 days to the Tariff Board. The Deputy Minister or the importer may appeal matters of law decided by the Tariff Board to the courts.

If material deemed by Customs to be immoral or indecent is illegally imported under Section 14 of the Customs Tariff Act, the material may be seized and destroyed by the Crown. The persons who imported or who are responsible for importing the goods are liable to a fine.

Problems with Customs Enforcement

1) Customs officials follow the same procedures as other law enforcement officials in focusing on sexual explicitness rather than violence or degradation. As a result, the more harmful types of pornography are allowed over the border.

- 2) Customs practices are not the same across Canada. The Joint Forces Project 'P' in Toronto has found that British Columbia and Quebec allow materials to cross their borders which would be prohibited in other provinces. The Attorneys General in the provinces set their own obscenity guidelines and standards and Customs officials tend to follow those guidelines. Once over the border, this material can be freely transported across Canada.
- 3) According to the 1978 Standing Committee on Justice and Legal Affairs, "most of the production, manufacture, distribution, importation and sale of sexually explicit material is effected by highly organized, strongly motivated, well-financed criminal networks, having their centres of control in various parts of the United States. Much of the sexually explicit material is produced and manufactured covertly by organized crime in the United States and transported surreptitiously across the Canadian border to agents and connections in this country. These Canadian agents then distribute these goods to retail outlets across the country which, in some cases, are controlled by these same criminal networks."
- 4) The heavy volume of traffic at border crossings creates a situation in which only a comparatively small number of vehicles can be searched.
- 5) Pornographic materials are often hidden among large quantities of non-pornographic materials so that the possibility of detection is slim even if a Customs officer decides to inspect a particular vehicle.
- 6) The federal guidelines for determining what is immoral or indecent are vague and decisions made by Customs officials are often subjective. Thus, a truck turned away at a border may successfully enter Canada at another crossing where the Customs official does not consider the material prohibitable.
- 7) The development of the videotape industry has made the process of detection of prohibited material more difficult and time-consuming. It is much easier to flip through magazines than to view tapes. At times, obscene scenes are placed in the middle or at the end of seemingly innocuous movies. Fake or misleading titles are also used to avoid detection.

- 8) Legitimate movie houses are given 60 days to decide whether they can afford to make the cuts necessary to allow importation. During the 60 days that the film is in Canada thousands of copies can easily be made. The movie house may then take the original film back to Customs stating that it could not afford to make the cuts. The original film is then banned by Customs, but the copies are not covered under the Customs Tariff Act and would have to be found and seized under Section 159 of the Criminal Code. This loophole in the legislation should be closed.
- 9) "An offence under the Customs Act is against the imported goods, not the importer. If prohibited, the goods are seized and destroyed, but the importer is not charged. There is therefore little personal risk to the importer of pornography." (Jarvis, 1982)
- 10) "The circularity of the community standards test is perpetuated by how Customs control or lack of it is perceived." (Jarvis, 1982)
- 11) A pornographic publication is considered prohibitable only if it has no redeeming features. (Jarvis, 1982)
- 12) Section (vii) of the guidelines for Customs officials refers to publications that appear to advocate, promote or incite hatred against groups on the basis of colour, race, religion, or ethnic origin. Gender is not mentioned as a category.

Recommended Changes to the Customs Tariff Act

We generally agree with the recommendations of the Standing Committee on Justice and Legal Affairs (1978) and therefore recommend that:

- 1) *Police forces at all levels, in both Canada and the United States, must engage in a vigorous, and ongoing campaign to detect, apprehend, and prosecute those who are involved in the production, manufacture, distribution, importation and sale of pornographic material. The purpose of this campaign should be to dismantle these criminal networks which are involved in a number of related fields of illegal activity.*

- 2) *In collaboration with a concerted police effort, Canadian Customs must be much more vigilant in detecting and prohibiting the entry into Canada of pornographic material.*
- 3) *The Customs and Excise Branch of Revenue Canada should hire and train the necessary personnel and acquire the necessary equipment to vigorously enforce anti-pornography legislation across Canada in an effective, co-ordinated manner.*

Council also recommends that:

- 4) *Importers found to be attempting to have pornographic materials cross the border should be charged and subject to heavy fines as well as having the goods seized and destroyed.*
- 5) *Standards at all Canadian borders should be made as uniform as possible. Clear guidelines on obscenity should be established federally and no province should be allowed to set standards that differ from the federal standards. The guidelines should be based on the definition of obscenity as stated in a revised Criminal Code.*
- 6) *Section 9(2)(vii) of the Customs guidelines should be amended to allow "identifiable group" to include gender.*
- 7) *The loophole in the legislation which allows the original films but not the copies to be banned, should be closed.*

Other Recommended Changes

- 1) Broadcasting Regulations

The Television Broadcasting Regulations of the federal Broadcasting Act should be amended to include the words 'or of either sex' to Section 6.1(b) . . . "No station or network operator or pay television licensee shall broadcast . . . any abusive comment or abusive pictorial representation of any race, religion, creed, or of either sex".

2) Sex-Role Stereotyping Guidelines

The Canadian Radio-Television and Telecommunications Commission should take measures to ensure broadcasters adhere to its guidelines set out by the Task Force on Sex-Role Stereotyping. It should be made clear that adherence to the sex-role stereotyping guidelines would disallow presentations of pornographic material. Identical guidelines should immediately be established in the pay television industry. Licences for pay television should be contingent upon adherence to these guidelines. The Canadian Film Development Corporation, the Department of Communications, the Canada Council and all other government-funded communication and cultural agencies should also adhere to sex-role stereotyping guidelines.

3) Municipal By-Laws

The Municipal Act should be amended to make it easier for municipalities to effectively regulate with respect to pornography. Municipalities are limited in the methods available to them under the Municipal Act to regulate the sale of pornographic materials. The most any municipality can do is attempt, with the limited powers available to it, to keep pornography out of reach and sight of young children. The authority given to the municipalities allows them to designate stores selling pornography as adult entertainment parlours and to regulate how these stores display "goods or services that appeal to erotic or sexual appetites or inclinations." As the language in this Act indicates, we are once again faced with legislation that focuses on the sexual aspect of the material and does not deal with the true nature of pornography.

We reiterate that the municipalities would have to use their bylaws to regulate only those pornographic materials that cannot be removed under the Criminal Code. It is important that each municipality use its powers to deal effectively with pornography and it is our hope that the Attorney General would make changes to the Municipal Act to require that this type of regulation take place.

PROSTITUTION

Prostitution and the Criminal Code

Prostitution is not a crime in Canada. What the Criminal Code does address itself to are various activities associated with prostitution, such as street solicitation, operation of bawdy-houses, procuring and living off the avails of prostitution.

The relevant sections of the Criminal Code are as follows:

Section 195 (1) Everyone who

- (a) procures, attempts to procure or solicits a female person to have illicit sexual intercourse with another person, whether in or out of Canada
-
- (d) procures or attempts to procure a female person to become, whether in or out of Canada, a common prostitute
-
- (j) lives wholly or in part on the avails of prostitution of another person

is guilty of an indictable offence and is liable to imprisonment for ten years.

Section 195.1(1) Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

Section 193 (1) Everyone who keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for two years.

(2) Everyone who

- (a) is an inmate of a common bawdy-house
- (b) is found, without lawful excuse, in a common bawdy-house or
- (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house is guilty of an offence punishable on summary conviction.

Also, under Section 194, it is an offence to transport, direct, or offer to transport or direct another person to a common bawdy-house.

In spite of the wording of the law, which would seem to address itself to all parties involved in prostitution and related activities, prostitutes are the ones who have overwhelmingly been subject to fines and imprisonment. Prostitution is seen by society and law to be a crime perpetrated by women. Condemnation of male participation as customers or controllers of prostitutes is rare. An example of this discrimination is found in the judicial interpretation of the solicitation provision. This provision would appear to be directed to both prostitutes and customers and yet rarely is a customer charged. Typically, only one party is charged and it is the prostitute. Indeed, if the police are working under cover, it is generally for entrapment of prostitutes, not customers. In British Columbia, the court stated that a male customer could not be convicted of soliciting for the purposes of prostitution since prostitution meant offering one's body for sale and the customer does not offer his body. The judge did not feel his interpretation to be an example of a double standard because he believed the evil aimed at in the legislation was the nuisance of prostitutes loitering and seducing in public places. In Ontario, the Court of Appeal decided differently and found that a male customer could be convicted of the offence of soliciting for purposes of prostitution. (Ridington and Findlay, 1981)

Even when men are charged, charges are more likely to be deferred for men (unless they are procurers) than women, or the men are released with just a fine while women are far more likely to receive a prison term (Belis et al., 1984). Statements by a Florida judge are perhaps indicative of the sexist thinking that underlies such legal findings. According to this judge's statement, a man who pays for sex cannot be blamed as much as a woman who accepts money to provide it. The judge had reversed his earlier decision to give male defendants the same penalty as female defendants. To back up this reversal, he stated that "the female commits the crime for profit or monetary gain, taking from a person a thing of value, whereas a male commits the crime for personal sexual satisfaction, harming no one but himself". (Toronto Star, January 13, 1984).

These ideas that the man has something of value taken from him in a transaction but that he is not taking anything of value, nor is he harming anyone but himself, are discriminatory and grossly inaccurate. There is a real victim in

prostitution - the prostitute herself. All women, children and adolescents are harmed for prostitution, more than any other feature of our society, "legitimizes the concepts that it is a man's monetary right if not his divine right to gain access to the bodies of women and children, and that sex is a female service that should not be denied the civilized male" (Brownmiller, 1975).

Prostitution functions as a form of violence against women and young persons. It is certainly a blatant form of exploitation and abuse of power. There is overwhelming evidence, both historically and currently, that men constitute the predominant or even exclusive clientele of prostitutes, whether the prostitutes are male or female. In the main, the sellers of sex are adult women and male and female children and adolescents. In addition, prostitutes tend to come from the most economically disadvantaged segments of our society (Backhouse, 1984; Bullough, 1978). Prostitution is related to the traditional dominance of men over women. The various expressions of this dominance include a concept of women as property and the belief that the sexual needs of men are the only sexual desires to be given serious consideration. Prostitution is a symptom of the victimization and subordination of women and of their economic disadvantage (Bullough, 1978).

Prostitution as Sexual Slavery

The United Nations Economic and Social Council (UNESCO), after a lengthy investigation into international trade in women, concluded that prostitution is a closed economic system, a form of slavery (Belis et al., 1984).

Most prostitutes are young and unskilled and have few prospects in the job market. The majority of prostitutes come from homes in which they have been subjected to sexual or physical abuse. In studies by James (1976), Nickes and Lynch (1978), and Silbert and Pines (1982), it was shown that more than 60 percent of prostitutes were physically beaten in the home and, in addition, many were exposed to the physical abuse of their mothers by their fathers. These same studies showed that 60 percent of prostitutes suffered sexual abuse, most often by fathers, step-fathers or other relatives. Higher figures for sexual assault are given by Sally deQuadros of the Vancouver Alliance for the Safety of Prostitutes, who states that 80 percent of prostitutes were sexually assaulted as children. (Toronto Star, March 31, 1984).

This abuse usually had begun by the time the child was 10 to 12 years old. Such abuse leads victims to view themselves as worthless and deserving of the treatment received. This low self-image can manifest itself in a variety of self-destructive ways, including promiscuity or prostitution (Barry, 1979; Rush, 1980).

Many prostitutes begin in the trade as young runaways from home. To the uninitiated, prostitution may seem an easy way to earn a living or to become a glamorous adult. Because of their age and low levels of education (the average education level of prostitutes is grade 10 [Nickes and Lynch, 1978]), there are not many options available. Once into prostitution, they are treated as social outcasts. If a prostitute has a criminal record, job prospects are bleak. As Kate Millett (1972) stated, "the causes of prostitution lie in the economic position of women, together with the psychological damage inflicted upon them through a system of sex-role conditioning in a patriarchal society".

Pimps and procurers also play important roles in attracting women and adolescents to prostitution by befriending them. It is believed that 80 to 90 percent of prostitutes have pimps (Barry, 1979; Symanski, 1981). The procurers or pimps may initially offer affection, a home and food. Low self esteem, runaway status and poverty make young women and children susceptible to such tactics. Once trust is developed and the initiate has successfully been cut off from her former life, the process of further reducing self esteem and inculcating dependency and indebtedness begin. In that process, physical brutality and torture are often employed.

The relationship of the prostitute to the pimp may, in many cases, be similar to that of a battered wife. Both have a difficult time removing themselves from the situation because of economic and emotional dependency, lack of social support, psychological destruction, character breakdown, and threat of violence. As in the case of the battered wife, often the nature of the relationship may make it difficult for the prostitute to clearly recognize her victimization by her pimp. In addition, both have difficulty in having the violence inflicted upon them taken seriously by law enforcement officials and society at large. The prostitute is even more vulnerable in this respect, for as she is considered a criminal and is legally and morally condemned by the law. Going to the police would appear to be even less of an option since police brutality has been reported by prostitutes (Barry,

1979). Furthermore, as violence and abuse is considered part of the life of a prostitute, there is less likelihood that anyone who sees or hears a prostitute being beaten would intervene directly or call the police. Research suggests that pimps have an important stake in not allowing their prostitutes to leave because they take 70 to 90 percent of the prostitutes' earnings (Gray, 1978; Symanski, 1981).

In addition to violence suffered at the hands of pimps, customers are also often sources of violence. In testimony heard before the House of Commons Justice Committee, it was stated that prostitutes have become victims of clients who, instead of wanting what is typically thought of as normal sex, now want to burn, torture and beat (Macleans, 1978). In a survey by McLeod (cited in Belis et al., 1984) it was documented that virtually every prostitute interviewed had experienced some form of physical violence. In their observational study, Prus and Irini (1979) stated that prostitutes often rely on hotel desk clerks for assistance when their life is endangered by violent clients. In Vancouver, the Alliance for the Safety of Prostitutes compiles and distributes descriptions of men who rob, rape, murder and assault prostitutes. (Toronto Star, March, 31, 1984).

In conclusion, it appears that pimps and procurers earn the most money from prostitution, and often use violence to keep women in the profession. The customers exploit the disadvantaged position of women in society and, in addition, frequently perpetrate violence on them. In spite of these facts, legal and social sanctions are focused on the prostitute, who is the one in the position of least control and the one least able to find other options for supporting herself.

Legislative Reform

Recommendations

The Ontario Status of Women Council makes the following recommendations for revisions to the Criminal Code which would have the effect of decriminalization for prostitutes and criminalization for customers and profiteers:

- 1) *The soliciting provision in Section 195.1 should be abolished;*
- 2) *Section 195.1 should be replaced with "every person who purchases or offers to purchase a sexual service or sexual services is guilty of:*

- a) *an indictable offence and is liable to imprisonment for two years if the offence is committed in relation to a person under the age of 18 years, or*
- b) *an offence punishable on summary conviction if the offence is committed in relation to a person 18 years of age or more";*

3) *The offence of procuring in Section 195 should be amended to provide protection for all persons procured;*

4) *The provisions relating to procurers and pimps should be strengthened and vigorously enforced;*

5) *The bawdy-house provisions should be changed in order to penalize profiteers;*

6) *The Criminal Code should be widened to include all those who profit from prostitution.*

The advantage of this approach is that the focus of prosecution would be aimed at customers, pimps and procurers rather than at prostitutes. Prostitutes have the least control over the situation and prosecution unlikely to deter them from returning to prostitution. Customers can be deterred. Prostitution will be greatly reduced if the number of customers is reduced. This approach would remove the burden from the prostitute and is a step supported by many individuals and groups who recognize the oppression and discrimination inherent in the present legislation. Such a step, however, would not legitimize or institutionalize prostitution.

Another problem such legislation would address is the harassment of women and girls by men who mistake them for prostitutes because they live in or near areas where prostitution occurs. By laying charges against customers, these women and children would receive some protection.

Sanctions against purchasing sexual services from persons under 18 directly address the very serious issue of child and teenage prostitution. Not knowing the age of the individual should be no defence to this charge.

Bawdy-house provisions would be amended so that the prostitute could not be convicted but persons who operate such facilities, or who earn profit through investing in the facility, or who share in the profits of the facility, would be subject to penalty.

Council chose the above as being the most just and workable approach to the problem of prostitution. The Council also considered but rejected the following legislative options:

Other Legislation Options

1) Criminalization

This method attempts to reduce the incidence of prostitution; the customer is implicated; increased sanctions are applied against pimps, procurers and profiteers; and it addresses itself to the issue of child and teenage prostitution.

However, the prostitute would probably still be the target of most enforcement actions; the prostitute's criminal record would make it less likely that she or he could move to another profession; and it would seem to focus on the visibility of prostitution. This focus on visibility is negative from two standpoints: there is an implicit assumption that prostitution is more tolerable if it is more hidden; the prostitutes who have to work the streets would seem to be the ones suffering most under the law.

2) Legalization

Legalization generally involves regulation of prostitution and a plan to licence prostitutes and/or the establishments where prostitution takes place. It would probably mean the establishment of 'red light' districts similar to those in Holland and Germany.

The advantages cited for this approach are: easier law enforcement, improved health standards and reduction of venereal disease, reduction in the amount of prostitution, elimination of prostitutes from the streets, reduction in the need for pimps, increased tax revenue, reduction in the possibility that prostitutes

would receive criminal records, reduction in the crime associated with prostitution, and improved self image for prostitutes.

However, as reported in Barry (1979) and Bullough (1978), regulated prostitution has accomplished nothing of which it has boasted. It has not cut down on prostitution nor on crimes associated with prostitution.

The most damaging argument against legalization is that it legitimizes prostitution. The process of enslaving women and turning them into commodities that are bought and sold is endorsed by the state. In this situation, the state becomes the pimp because it is in the position of controlling the activities of the prostitute and making money from her labour.

3) Decriminalization for Prostitutes and Customers and Sanctions Against Profiteers

The advantage of this approach is that the prostitute would no longer bear the weight of the legislation. Procurers, pimps and profiteers would be the focus of legislative action.

The cited advantage is that such changes would permit prostitutes and customers to conduct their business in public or private without the intervention of criminal law.

Decriminalization, like legislation, appears to legitimize the institution of prostitution. Decriminalization would do nothing to reduce the incidence of prostitution. Another cited advantage of this approach is that since the bawdy-house provisions would be amended, prostitutes and their customers would be free to operate in these premises and thus the street activity would be reduced.

This approach attempts to address the issue of child and teenage prostitution under present Criminal Code provisions. A major flaw, however, is that present provisions such as Section 166 (procuring defilement), Section 157, (Act of Gross Indecency) or Section 146 (Sexual Intercourse with a female under the age of 14 or with a female between the ages of 14 and 16 who is of previous chaste character), are completely inadequate in dealing with child and teenage prostitution. Certainly, any prostitute between the ages of 14 and 18 would receive no protection under the legal system as it currently stands.

In a well-publicized London case, family court judge Ross Webster acquitted Farid Zacharia of the criminal offence of gross indecency despite a photograph showing the accused involved in oral sex with a 14-year-old girl. In making his decision, the judge reminded the court of Trudeau's statement excluding the state from the bedrooms of Canadians . . . Webster said, "on that particular point, I agree with Trudeau . . . if this were not a juvenile, the charge would never have been laid. Zacharia didn't have some young innocent girl in a motel room, but rather chose a 14-year-old who admitted being a prostitute". (London Free Press, July 14, 1983). Such a statement clearly implies that one need only to find a child that other men have previously abused. As long as one does something that is no more reproachable than the other acts perpetrated on her, one may act with impunity.

Zacharia was charged under the Juvenile Delinquents Act of contributing to the girl's juvenile delinquency by making obscene pictures of her. In addition, another man was convicted of contributing to the girl's delinquency by having sexual intercourse with her. Under the new Young Offenders Act, there is no jurisdiction for contributing to juvenile delinquency. Even this minor sanction is no longer available to us.

Social Reform

Regardless of whatever legislative changes are made affecting prostitution, development of social policy to deal with job counselling, relocation, retraining and emotional counselling of prostitutes is essential. In addition, special programs need to be developed to deal with the needs of the adolescent prostitute. In order to be effective, these programs must be given priority and be well funded.

Since sexual abuse of children is a contributing factor to prostitution, any policy designed to eliminate or reduce prostitution must address this problem. More research funds must be directed toward understanding the causes of sexual abuse, developing better methods of detection and establishing effective measures of prevention. In addition, research efforts and funds must be directed toward development of treatment programs. Education about sexual abuse should be a priority in Canada and special educational methods should be developed and implemented for school age children.

Because many prostitutes appear to have left school before completion of their secondary education, more effort should be directed at determining the reasons students drop out and in implementing measures to reduce the drop-out rate. More effective career counselling programs are needed for young girls. Many female students still hold stereotypical ideas of the type of jobs to which they could aspire and few are fully aware of the necessity of being able to support themselves.

More good group homes for runaway adolescents are needed for young people and the development of such centres throughout Canada should be a priority.

Education programs and films should be developed to give the general public accurate information about prostitution and about the life situation of prostitutes. Prostitution should be connected with other forms of abuse against women and children. In addition, programs should be developed for school age children. Young people should be fully informed about the tactics of procurers and pimps and about the consequences of entering into what might be presented to them as a glamorous and lucrative profession.

More research is needed into the lives of prostitutes, the causes of prostitution and the methods most effective in preventing its occurrence and assisting prostitutes to extricate themselves from the trade.

The Council therefore recommends:

- 1) *Social policies to deal with job counselling, relocation, retraining and emotional counselling of prostitutes should be developed;*
- 2) *Special programs should be developed to deal with the needs of adolescent prostitutes.*

Economic Reform

Economic reforms are necessary in order to alleviate the problem of women and girls turning to prostitution because of few other available options. Council therefore recommends the following methods to improve the economic status of all women in our society:

- 1) *legislated affirmative action programs;*
- 2) *contract compliance;*
- 3) *better enforcement of the employment standards legislation;*
- 4) *improved childcare facilities;*
- 5) *re-training programs for women to assist them to enter the higher paying non-traditional jobs;*
- 6) *extension of benefits to part-time workers on a pro-rated basis with full-time workers;*
- 7) *changes to social benefits legislation in order to allow women to adequately support their families.*

SUMMARY OF RECOMMENDATIONS

PORNOGRAPHY

Criminal Code - Obscenity Legislation

- 1) The word "publication" in Section 159(8) should be changed to "any matter or thing".
- 2) The guidelines and standards for interpretation of the obscenity legislation should be uniform across Canada.
- 3) Either the current use of the concept of community standards of tolerance ought to be abandoned or a representative survey of Canadian views ought to be conducted and made available to the judiciary. Use of such survey results in court decisions would require a change in law that would clearly state such evidence is admissible.

In addition, for cases where the prosecution is taken under Section 159, the Criminal Code should be amended to permit the Attorney General to override an accused's option for mode of trial and request a trial by jury. (Standing Committee on Justice and Legal Affairs, 1978)

- 4) The word "dominant" should be eliminated from Section 159(8).
- 5) Section 159(8) should be changed to allow for the undue exploitation of any one or more of crime, horror, cruelty, violence or sex or the undue degradation of one or more persons to be considered obscene.
- 6) When sex and any one or more of violence, horror, cruelty or violence are shown in combination in any matter or thing, there should be less stringent criteria used in order to establish undue exploitation. In addition, written or pictorial content that represents a victim as enjoying or desiring pain for sexual pleasure ought to indicate undue exploitation. Research clearly shows that the combination of sex with any of the above subjects and the indication of enjoyment of abuse by victim have the worst effects in terms of promoting violence against women.

- 7) For the purposes of subsection (8), any matter or thing that is otherwise obscene should be deemed to be obscene whether or not any acts or circumstances which are depicted or described in the matter or thing have been simulated.
- 8) Section 159(8) should be amended to include sexually explicit material involving children within the definition of obscenity. Where one or more persons depicted in sexual poses or scenes is a child (under 18 years of age) or is an adult portraying a child, it should be deemed obscene.
- 9) The sale or provision of obscene matter to children (persons under the age of 18) should be a separate charge under the Criminal Code and be subject to stiffer penalties.
- 10) As was similarly stated in the Standing Committee on Justice and Legal Affairs (1978), provincial, regional, municipal and local authorities should adopt the necessary zoning and child protection legislation, regulations and by-laws to ensure that pornography is advertised, displayed and sold discreetly to adults and under no circumstances to children or young people (under the age of 18).
- 11) Section 165 of the Criminal Code should be amended so that stiffer penalties could be imposed on individuals convicted under Section 159.

Criminal Code - Hate Propaganda Legislation

- 1) The Criminal Code should be amended to include gender as an "identifiable group" in Section 281.1(4).
- 2) The word "willfully" should be removed from Section 281.2(2).
- 3) The approval of the Attorney General of the province should not be required to prosecute under Sections 281.1 and 281.2.

Customs Tariff Act and Procedures

- 1) Police forces at all levels, in both Canada and the United States, must engage in a vigorous, and ongoing campaign to detect, apprehend, and prosecute those who are involved in the production, manufacture, distribution, importation and sale of pornographic material. The purpose of this campaign should be to dismantle these criminal networks which are involved in a number of related fields of illegal activity.
- 2) In collaboration with a concerted police effort, Canadian Customs must be much more vigilant in detecting and prohibiting the entry into Canada of pornographic material.
- 3) The Customs and Excise Branch of Revenue Canada should hire and train the necessary personnel and acquire the necessary equipment to vigorously enforce anti-pornography legislation across Canada in an effective, co-ordinated manner.
- 4) Importers found to be attempting to have pornographic materials cross the border should be charged and subject to heavy fines as well as having the goods seized and destroyed.
- 5) Standards at all Canadian borders should be made as uniform as possible. Clear guidelines on obscenity should be established federally and no province should be allowed to set standards that differ from the federal standards. The guidelines should be based on the definition of obscenity as stated in a revised Criminal Code.
- 6) Section 9(2)(vii) of the Customs guidelines should be amended to allow "identifiable group" to include gender.
- 7) The loophole in the legislation which allows the original films but not the copies to be banned, should be closed.

Other Legislation

1) Broadcasting Regulations

The Television Broadcasting Regulations of the federal Broadcasting Act should be amended to include the words 'or of either sex' to Section 6.1(b) . . . "No station or network operator or pay television licensee shall broadcast . . . any abusive comment or abusive pictorial representation of any race, religion, creed, or of either sex".

2) Sex-Role Stereotyping Guidelines

The Canadian Radio-Television and Telecommunications Commission should take measures to ensure broadcasters adhere to its guidelines set out by the Task Force on Sex-Role Stereotyping. It should be made clear that adherence to the sex-role stereotyping guidelines would disallow presentations of pornographic material. Identical guidelines should immediately be established in the pay television industry. Licences for pay television should be contingent upon adherence to these guidelines. The Canadian Film Development Corporation, the Department of Communications, the Canada Council and all other government-funded communication and cultural agencies should also adhere to sex-role stereotyping guidelines.

3) Municipal By-Laws

The Municipal Act should be amended to make it easier for municipalities to effectively regulate with respect to pornography. Municipalities are limited in the methods available to them under the Municipal Act to regulate the sale of pornographic materials. The most any municipality can do is attempt, with the limited powers available to it, to keep pornography out of reach and sight of young children. The authority given to the municipalities allows them to designate stores selling pornography as adult entertainment parlours and to regulate how these stores display "goods or services that appeal to erotic or sexual appetites or inclinations." As the language in this Act indicates, we are once again faced with legislation that focuses on the sexual aspect of the material and does not deal with the true nature of pornography.

PROSTITUTION

Criminal Code

- 1) *The soliciting provision in Section 195.1 should be abolished;*
- 2) *Section 195.1 should be replaced with "every person who purchases or offers to purchase a sexual service or sexual services is guilty of:
 - a) *an indictable offence and is liable to imprisonment for two years if the offence is committed in relation to a person under the age of 18 years, or*
 - b) *an offence punishable on summary conviction if the offence is committed in relation to a person 18 years of age or more";**
- 3) *The offence of procuring in Section 195 should be amended to provide protection for all persons procured;*
- 4) *The provisions relating to procurers and pimps should be strengthened and vigorously enforced;*
- 5) *The bawdy-house provisions should be changed in order to penalize profiteers;*
- 6) *The Criminal Code should be widened to include all those who profit from prostitution.*

Social Reform

- 1) *Social policies to deal with job counselling, relocation, retraining and emotional counselling of prostitutes should be developed;*
- 2) *Special programs should be developed to deal with the needs of adolescent prostitutes.*

Economic Reform

The following measures should be implemented:

- 1) *legislated affirmative action programs;*
- 2) *contract compliance;*
- 3) *better enforcement of the employment standards legislation;*
- 4) *improved childcare facilities;*
- 5) *re-training programs for women to assist them to enter the higher paying non-traditional jobs;*
- 6) *extension of benefits to part-time workers on a pro-rated basis with full-time workers;*
- 7) *changes to social benefits legislation in order to allow women to adequately support their families.*

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